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WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

IN RE: ACTOS® (PIOGLITAZONE)
PRODUCTS LIABILITY LITIGATION

MDL No. 6:11-md-2299

JUDGE DOHERTY

This Document Applies To:

*Espaillat v. Takeda Pharmaceuticals
USA, Inc., et al*
Civil Action No. 6:14-cv-00561

MAGISTRATE JUDGE HANNA

RULING

Magistrate Judge Patrick Hanna has filed a Report and Recommendation [Rec. Doc. 46; MDL Rec. Doc. 6782] in which he recommends this Court dismiss the claims of plaintiff Hector Espaillat without prejudice, due to failures to prosecute his case and to comply with the court's rules. For the reasons given below, this Court adopts the Report and Recommendation and dismisses Mr. Espaillat's claims without prejudice.

As set out in the Report and Recommendation, Mr. Espaillat is currently unrepresented, but was previously represented by Ms. Stephanie O'Connor and Mr. Michael London. Counsel filed a motion to withdraw [Rec. Doc. 37], asserting that Mr. Espaillat had passed away and that counsel had been in touch with Mr. Espaillat's daughter, Edna Espaillat Rivera, but that counsel had been unable to maintain contact with Ms. Rivera despite considerable efforts. Ms. Rivera and counsel were ordered to appear in court [Rec. Doc. 39], however, Ms. Rivera did not appear at the hearing.¹ At the hearing, Ms. O'Connor indicated she had been unable to contact Ms. Rivera despite diligent effort, and confirmed for the court Ms. Rivera's last known address, which is the address at which service was attempted. Magistrate Judge Hanna granted the motion to withdraw,

¹ The copy of the order to appear that was sent by the Clerk of Court, *via* certified mail, was returned to the court marked "Unclaimed" [Rec. Doc. 48], after Magistrate Judge Hanna's Report and Recommendation was entered.

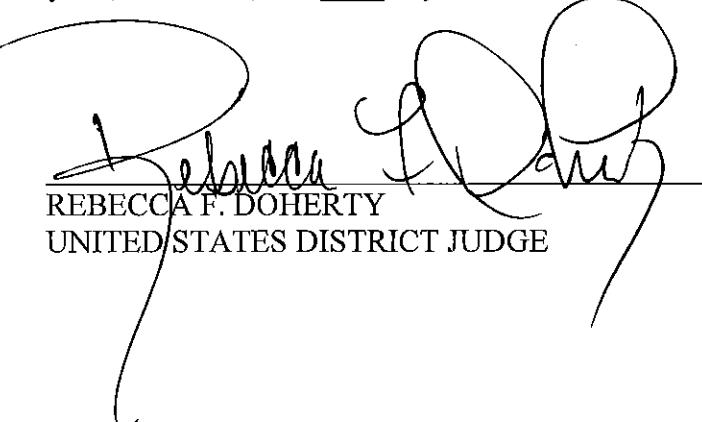
and ordered Ms. Rivera to appear in court a second time, or risk a recommendation that her case be dismissed for failure to prosecute [Rec. Doc. 42]. The Clerk of Court attempted to serve this order on Ms. Rivera by certified mail, but there is no indication in the record such service was successful.

Given the lack of evidence in the record that Ms. Rivera was served at her last known address, and the lack of forward progress in this matter, Magistrate Judge Hanna concluded that Ms. Rivera has not kept the court apprised of her current contact information, as required by Local Rule 11.1, and/or that she has failed to prosecute her claims. Magistrate Judge Hanna therefore issued a Report and Recommendation, recommending that this Court dismiss this matter without prejudice [Rec. Doc. 46]. The Clerk of Court mailed the Report and Recommendation by first-class mail to Ms. Rivera's last known address on January 23, 2017. Out of an abundance of caution, the Clerk sent the Report and Recommendation again, this time by certified mail, on May 22, 2017. This Court has made all reasonable efforts to ensure service of these documents has been made for the purpose of granting notice, the period for lodging objections to the Report and Recommendation has run, and no objection has been lodged. It has now been more than four months since the Clerk of Court's initial attempt to serve Ms. Rivera by first-class mail to her last known address, and three weeks since the Clerk attempted service by certified mail to the same address, and there has been no response to either. Consequently, this Court dismisses the claims of Ms. Rivera, as representative of Hector Espaillat, without prejudice.

IT IS HEREBY ORDERED the claims of Hector Espaillat are DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED a copy of this Ruling be served on Edna Espaillat Rivera at her last known address, 93-20 Albert Road, Ozone Park, NY 11417, *via* certified mail, return receipt requested.

THUS DONE AND SIGNED in Lafayette, Louisiana, this 12 day of June, 2017.



REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE